

ORIGINAL

Before The
Federal Communications Commission
 Washington D.C. 20554

RECEIVED**JUL 14 1993**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

 Implementation of Section 25)
 of the Cable Television Consumer)
 Protection and Competition)
 Act of 1992)

MM Docket No. 93-25

 Direct Broadcast Satellite)
 Public Service Obligations)

To: The Commission

REPLY COMMENTS

Hispanic Information and Telecommunications Network, Inc., ("HITN"), by its counsel, hereby submits its Reply Comments with respect to the above-referenced proceeding.¹ Specifically, HITN submits its Reply Comments with respect to those comments filed by interested parties in this proceeding on May 24, 1993, directed to that portion of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act") which relates to carriage obligations for non-commercial, educational and informational programming. HITN will address these comments which it feels reflects its own positions regarding the critical issues in this proceeding. In support

¹ Reply Comments were due to be filed by May 24, 1993. See *Notice of Proposed Rulemaking*, 8 FCC Rcd 1589 (1993). An *Order Granting Extension of Time to File Reply Comments* was released on June 24, 1993, extending the date for filing Reply Comments in this proceeding to July 14, 1993. Consequently, the HITN Reply Comments are timely filed.

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law.³

Eligibility Requirements

As HITN stated in its Comments, the fundamental issue with respect to the carriage obligations for noncommercial educational and informational programming is the establishment of the eligibility requirements for the use of the DBS set-aside channels in the Cable Act.

As HITN also demstrated in its Comments, ITFS licensees are clearly eligible to use this proposed service. One of the commentors, the Association of America's Public Television Stations and the Corporation For Public Broadcasting ("APT"), goes so far as to urge that the definition of "public or private educational institution" in Section 25 of the Cable Act be limited to "accredited educational institutions and government organizations engaged in formal education," referring specifically to 47 C.F.R. § 74.932(a) of the ITFS rules. HITN supports the position of APT in this matter and reiterates its belief that only entities engaged in formal education should be qualified to use the set-aside channels.

Definition of Term "National"

³ As the Consumer Federation of America ("CFA") correctly points out in its comments, DBS service is now expressly conditioned upon the 4-7% channel set-aside mandated by the Cable Act.

The Commission in Paragraph 43 of the NPRM asks for specific comments with respect to the definition of the term "national" in "national educational programming supplier". HITN clearly

fashion contemplated by Congress in enacting the Cable Act, if indeed it could be implemented at all. Opening the floodgates of non-commercial programming to any non-commercial entity who desires to use DBS channel time would guarantee the failure of the entire set-aside program.

Channel Capacity

HITN agrees with the numerous commentors which urged the Commission to use the most expansive definition possible, rather than sticking to the 24 MHz definition for Part 100 licensee and the 30-36 MHz definition for Part 25 providers. As many commentors stated, the Commission should factor in the use of compression technology in its calculation of DBS system's channel capacity. Channel capacity should mean the maximum number of channels available to the DBS provider for the carriage of programming by the system.

Percentage of Set-Aside Channels

All DBS systems should be subjected to the same reservation requirement, i.e., the maximum percentage of 7%, with the channels available rounded up to the next full integer to meet or exceed the required percentage. The Commission should reject those commentors, such as DirecTV who suggest that the Commission use the lower end of the channel set-aside as the ceiling rather than the minimum. The DBS providers who submitted comments all suggest restricting the percentage of

channels as much as possible. Once again their self-interest should be dismissed and the position of the majority of the commentators, who urge the maximum number of channels, i.e., 7%, be set aside from the inception of each DBS operator's service.

Rates

AS HITN urged in its Comments, a central focus of the Commission's rules should be that rates should be kept as low as possible. This is a critical issue for all qualified noncommercial entities who wish to distribute their channels on the set-aside channels. Consequently, no indirect costs of any kind should be permitted to be included in the determination of the rates by the DBS provider.

Several of the DBS operators, not surprisingly, urge a broader interpretation of the definition of direct costs. DirecTV, for instance, urges a very broad interpretation, proposing that the definition should even include the "primary costs of launching and distributing DBS services." This position must be rejected out of hand, as the overwhelming majority of commentators urge. HITN supports those numerous commentators, such as CFA, the Staten Island Journal, and the National League of Cities who propose that rates for the service be paid for by the DBS operator from funding generated by subscriber fees to the DBS service. At the very least, the 50% of direct costs should be used as a ceiling and not a floor.

Qualified entities should be able to pay less than 50% of the cost of the channels, and DBS operators should establish a flexible fee schedule based on non-commercial entities ability to pay.⁵

Definition of Educational Programming

Unlike many of the commentators, HITN urges that the Commission should define educational programming. More precisely, that it apply the definition it has already established for educational programming in the ITFS service to find the meaning of the term "educational programming".⁶ This definition should apply here. In order to eliminate any debate, and to establish a bright line definition to allow true educational programmers access to this

⁵ WNET of New Jersey also proposes that non-profit organizations receiving Federal funding receive price discounts for the use of the channels. HITN would support across-the-board discounts for non-profit organizations, and not just restricting such discount to those lucky few groups who receive Federal funding.

⁶ Section 74.931 of the Commission's rules governing the ITFS service, entitled "Purpose and Permissible Service", states that:

"Instructional television fixed stations are intended primarily to provide a formal educational and cultural development, in aural and visual form, to students enrolled in accredited public and private schools, colleges and universities. Every channel must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools.

new satellite service, the Commission must define educational programming as that which is used in an accredited course in a formal educational programming offered for credit to enrolled students of accredited schools. Without this distinction, virtually every programmer in America can lay claim to being a source of educational or informational programming.

Allocation System

HITN urged in its Comments that there should be some type of allocation system established for the orderly distribution of the set-aside channels. HITN pointed out that DBS operators should not be allowed to pick and choose who they wish to deal with from among those entities indicating their desire to use, and pay for, the set-aside channels. Otherwise, the whole set-aside concept will fail to meet its goals of providing educational programming to the public.

Two other commentators raised this issue. Both the APT and the Staten Island Journal proposed the institution of a panel or advisory committee of qualified parties to manage the logistics involved in qualified parties gaining access to and properly utilizing the set-aside DBS channels. Another group, the Consume Federation of America urged that the restriction of DBS operators to exercise editorial control over programming must mean that DBS operators are also barred from deciding which programmers can use the set-aside channels. As seen from its

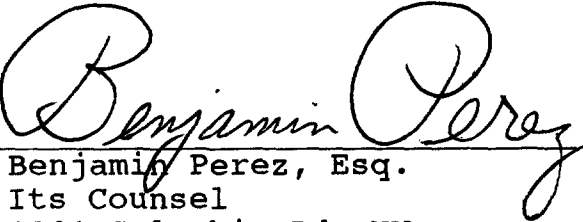
Comments HITN agrees with this concept and would urge the adoption of some sort of advisory panel to coordinate with the FCC with regard to the use of the set-aside channels. However, as it maintained in its comments HITN reiterates that ultimately, FCC control of the procedure for allocating use of the set-aside channels is necessary. So, whether the FCC set up an advisory panel for the allocation of the channels, or the FCC adopts the HITN allocation proposal contained in its comments, the FCC must ultimately ensure that the statutory objectives are achieved. ⁷

WHEREFORE, the foregoing premises considered, HITN respectfully requests that Commission incorporate the comments

govern the use of the channels set aside for use by national educational programming suppliers in the DBS service.

Respectfully Submitted,

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